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Arizona Corporation Commission

DOCKETED

MAR 3 2017

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GB

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BEFORE THE ARIZONA CORPORATION COMMISSIONCOMMISSIONERS

13 TOM FORESE, Chairman
14 BOB BURNS
15 DOUG LITTLE
16 ANDY TOBIN
17 BOYD W. DUNN

17 IN THE MATTER OF THE
18 APPLICATION OF ARIZONA PUBLIC
19 SERVICE COMPANY FOR A HEARING
20 TO DETERMINE THE FAIR VALUE OF
21 THE UTILITY PROPERTY OF THE
22 COMPANY FOR RATEMAKING
23 PURPOSES, TO FIX A JUST AND
24 REASONABLE RATE OF RETURN
25 THEREON, TO APPROVE RATE
26 SCHEDULES DESIGNED TO DEVELOP
27 SUCH RETURN.

DOCKET NO. E-01345A-16-0036

**ARIZONA PUBLIC SERVICE
COMPANY'S RESPONSE TO
WARREN WOODWARD'S THIRD
MOTION TO COMPEL**

23 IN THE MATTER OF FUEL AND
24 PURCHASED POWER PROCUREMENT
25 AUDITS FOR ARIZONA PUBLIC
26 SERVICE COMPANY.

DOCKET NO. E-01345A-16-0123

26 On December 5, 2016, Intervenor Warren Woodward submitted his second set of
27 data requests (DRs) to Arizona Public Service Company (APS or Company). That set
28 consisted of 45 questions, most with subparts. APS timely responded to Questions 9

1 through 13, 18, and 23 through 45 (with the exception of 36 (a)). APS objected to
2 Questions 1 through 8, 14, 22 and 36(a) on the grounds of relevancy.

3 On December 27, 2016, Mr. Woodward filed his first Motion to Compel (First
4 Motion). APS filed a timely response to the First Motion on December 30, 2017.

5 APS further objected to Questions 15, 16(a), 17(a), 19 and 21 of Mr.
6 Woodward's DRs, but not withstanding its objections provided Mr. Woodward with
7 answers to the best of its ability. Mr. Woodward then filed a second Motion to Compel
8 (Second Motion) on January 19, 2017. The Second Motion addressed solely Question
9 19.¹ APS filed a timely response to the Second Motion on January 20, 2017.

10 On February 6, 2017, the Presiding Officer issued a Procedural Order granting
11 the First Motion and denying the Second Motion. APS subsequently responded to
12 Questions 2.1 through 2.8, 2.14, 2.22 and 2.36(a).

13 Mr. Woodward's third Motion to Compel (Third Motion) is focused on Questions
14 2.2 and 2.5. These Questions and APS's answers are set forth in Attachment A.

15 **ARGUMENT**

16 APS has responded to both Questions 2.2 and 2.5. The average daily total of
17 transmission time for Elster and L&G meters and the average time per transmission are
18 the only figures APS possesses from the manufacturers of these meters. Dividing the
19 former number by the latter number gives one the average transmissions per day. APS
20 itself does not count or otherwise record the number of transmissions from either brand
21 of meter.

22 As previously noted in APS's response to the Second Motion and in the February
23 6, 2017 Procedural Order, no party is required to provide information it does not
24 possess. This is clearly set forth in Rule 34 of the Arizona Rules of Civil Procedure,
25 which are adopted by reference in A.A.C. R-14-3-101(A).

26 Rule 34 states that information requested through discovery must be "in the
27

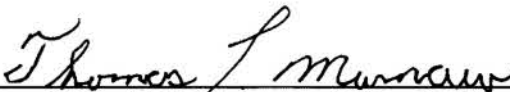
28 ¹ Both Question 19 and APS's responses were quoted in the Second Motion.

1 possession, custody or control of the party upon whom the request is served." This has
2 long been the rule in Arizona. *See State Farm Insurance Co. v. Roberts*, 97 Ariz. 169,
3 173-74, 398 P.2d 671, 673 (1965); *Dean v. Superior Court in and for Maricopa County*,
4 84 Ariz. 104, 114, 324 P.2d 764, 771 (1958). It is also the established standard in other
5 jurisdictions. "It is a rule of universal application that a party who does not have
6 possession and control of documents cannot be ordered to produce them for discovery."
7 *City Savings Ass'n v. Mensik*, 260 N.E.2d 110, 114 (Ill. App. Ct. 1970). *City Savings*
8 cites cases from Missouri, New York and Texas as well as the *Roberts* to support its
9 assertion that the rule enunciated in *Roberts* is truly of "universal application."

10 CONCLUSION

11 The Third Motion is more an argument by Mr. Woodward over the accuracy of
12 the information provided APS by Elster and L&G than a true discovery dispute. To the
13 extent the Commission finds the frequency of transmissions from AMI meters to be
14 relevant to any issue in this rate case, Mr. Woodward will have every opportunity to
15 present evidence on that point at the upcoming hearing. APS has provided all it has
16 received from the meters' respective manufacturers and does not independently track
17 meter transmissions. The Third Motion should be denied.

18 RESPECTFULLY SUBMITTED this 3rd day of March 2017.

19
20 by: 

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25 ORIGINAL and thirteen (13) copies
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27 March 2017, with:
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ATTACHMENT A

Mumaw, Thomas L

From: Mumaw, Thomas L
Sent: Thursday, February 16, 2017 12:06 PM
To: 'Warren Woodward'
Cc: Smith, Barbara G; Bordenkircher, Scott B; Krueger, Melissa M
Subject: RE: Woodward 2.2; 2.5; and 2.8

I have continued to dig on your behalf and have found material from Elster and L&G indicating that the average time for an individual transmission is 25 milliseconds and 48 milliseconds, respectively. From that one could calculate an average number of daily transmissions. The minimum number, of course, is the number of scheduled transmissions, which APS has given you.

INTERVENOR WARREN WOODWARD'S
SECOND SET OF DATA REQUESTS TO
ARIZONA PUBLIC SERVICE COMPANY REGARDING
THE APPLICATION TO APPROVE RATE SCHEDULES DESIGNED TO
DEVELOP A JUST AND REASONABLE RATE OF RETURN
DOCKET NO. E-01345A-16-0036
DECEMBER 5, 2016

Woodward 2.2: Under what scenarios and how often does a node meter transmit outside of the daily schedule, i.e., unscheduled transmission such as on-demand read, tamper/theft alert, last gasp, firmware upgrade etc.?

Response: Meter transmissions are not relevant to any matters at issue in APS's pending rate case. Accordingly, APS objects to this request as irrelevant and not likely to lead to the discovery of admissible evidence.

In addition, the Arizona Corporation Commission (ACC) spent three years performing an inquiry in Docket No. E-00000C-11-0328 regarding the health, safety and functionality of advanced meters (also sometimes referred to as "smart meters"). The ACC commissioned the Arizona Department of Health Services to conduct a study regarding advanced meters. That study concluded that the advanced meters in use in Arizona (by APS and others) met and were operating within the Federal Communications Commission's standards and were not likely to harm public health. See ADHS report docketed November 4, 2014 in Docket No. E-00000C-11-0328 and Commission Findings of Fact 7 through 9 in Decision No. 75047 in Docket No. E-01345A-13-0069.

Supplemental Response: All APS AMI Node Meters perform unscheduled transmissions as necessary. Unscheduled transmissions occur for several types of events such as service control messages (connects, disconnects, demand/kW resets, etc.), power outage and restoration messages (also known as "last gasp"), meter tampering messages, unscheduled on-demand electric usage reads, voltage thresholds messages, and firmware and software upgrades.

The number of transmissions may increase if a Node Meter cannot transmit the electric usage data it has stored at the meter's regularly scheduled transmission time due to meter malfunctions, obstacles, or other reasons. In the Elster mesh network, the Gatekeeper Meter will periodically re-query these meters to attempt to receive data until the transmission is successful. Additionally, any meter that cannot connect to the mesh network will send time request messages every 2.5 minutes (rather than the scheduled 15 minute transmissions) until a network connection is established. This process is the same with the Landis+Gyr network, except any additional queries to retrieve data are not specifically scheduled.

As noted in APS's response to Woodward Question 2.1, Landis+Gyr meters also perform unscheduled meter optimizations and time stamps as necessary.

INTERVENOR WARREN WOODWARD'S
SECOND SET OF DATA REQUESTS TO
ARIZONA PUBLIC SERVICE COMPANY REGARDING
THE APPLICATION TO APPROVE RATE SCHEDULES DESIGNED TO
DEVELOP A JUST AND REASONABLE RATE OF RETURN
DOCKET NO. E-01345A-16-0036
DECEMBER 5, 2016

Supplemental Response Continued: As these transmissions are performed on an as-needed basis, the number of daily transmissions is variable. APS cannot provide a reasonable estimate of the number of transmissions per day for unscheduled events. However, the meter manufacturers report that, on average, total Elster meter transmissions (both scheduled and unscheduled) are approximately 17 seconds per day and, for Landis+Gyr meters, are approximately 83 seconds per day.

INTERVENOR WARREN WOODWARD'S
SECOND SET OF DATA REQUESTS TO
ARIZONA PUBLIC SERVICE COMPANY REGARDING
THE APPLICATION TO APPROVE RATE SCHEDULES DESIGNED TO
DEVELOP A JUST AND REASONABLE RATE OF RETURN
DOCKET NO. E-01345A-16-0036
DECEMBER 5, 2016

Woodward
2.5: Under what scenarios and how often does a gateway meter transmit outside of the daily schedule, i.e., unscheduled transmission such as on-demand read, tamper/theft alert, last gasp, firmware upgrade etc.?

Response: The number and types of transmissions are not relevant to any matters at issue in APS's pending rate case. Accordingly, APS objects to this request as irrelevant and not likely to lead to the discovery of admissible evidence.

In addition, the Arizona Corporation Commission (ACC) spent three years performing an inquiry in Docket No. E-00000C-11-0328 regarding the health, safety and functionality of advanced meters (also sometimes referred to as "smart meters"). The ACC commissioned the Arizona Department of Health Services to conduct a study regarding advanced meters. That study concluded that the advanced meters in use in Arizona (by APS and others) met and were operating within the Federal Communications Commission's standards and were not likely to harm public health. See ADHS report docketed November 4, 2014 in Docket No. E-00000C-11-0328 and Commission Findings of Fact 7 through 9 in Decision No. 75047 in Docket No. E-01345A-13-0069.

Supplemental
Response: The same types of unscheduled transmissions that may occur for Node Meters may also occur for Elster Gatekeeper Meters. Please see the Company's response to Woodward Question 2.2.

The Landis+Gyr network does not utilize Gatekeeper-type meters.